

**Notice of Allowability**

Application No.

10/542,684

Applicant(s)

COLUCCI ET AL.

Examiner

Art Unit

Jason M. Nolan, Ph.D.

1626

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/9/2007.
2. ☒ The allowed claim(s) is/are 1-8 and 18-21 (now 1-12).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                      |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|  | 9. <input type="checkbox"/> Other _____.   |

### **DETAILED ACTION**

This Office Action is in response to Applicants Amendment – After Non-Final Rejection, filed 10/09/2007. **Claims 1-8, 12, 14-16, & 18-21** are pending in the instant application; of which **Claims 8, 20, & 21** are currently amended. **Claims 12, 14-16, 20, & 21** are withdrawn and **Claims 9-11, 13, & 17** are canceled.

#### ***Response to Amendment***

Applicant's amendments with respect to **Claims 8, 20, & 21** have been fully considered and are entered. The status identifiers for said claims are corrected herein. The ODP rejection of **Claims 1, 3-8, & 19** is withdrawn per Terminal Disclaimer. The objection to **Claims 2 & 18** is withdrawn.

#### ***Terminal Disclaimer***

The terminal disclaimer filed on 10/09/2007 disclaiming the terminal portion of any patent granted on this application that would extend beyond the expiration date of US Patent 6,525,025 has been reviewed and is accepted. The terminal disclaimer has been recorded. The obviousness-type double patenting rejection of **Claims 1, 3-8, & 19** is withdrawn.

***Rejoined Inventions***

**Claims 1-8, 18, & 19** are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(b), **Claims 20 & 21**, directed to the products with intended use, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104. **Claims 12 & 14-16** directed to the invention(s) directed to the process of using the allowable product require all the limitations of an allowable product claim, however have NOT been rejoined.

Because a claimed invention previously withdrawn from consideration under 37 CFR 1.142 has been rejoined, the restriction requirement between **Groups I & VII** as set forth in the Office action mailed on 05/09/2007 are hereby withdrawn. In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Therefore, the restriction requirement (Lack of Unity) between the examined **Groups I & VII** and the non-examined, withdrawn **Groups II – IV** is maintained.

***Examiner's Amendment***

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Raynard Yuro on December 5, 2007.

The application has been amended as follows:

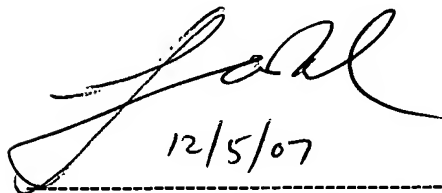
1. Delete/Cancel **Claims 12 & 14-16**. These claims are canceled without prejudice; therefore Applicants retain the right to file divisional or continuation applications on the contents thereof.
2. Amend the status identifier of **Claim 8** from (original) to (currently amended).
3. Amend the status identifier of **Claims 20 & 21** from (withdrawn) to (withdrawn -currently amended).

***Conclusion***

**Claims 1-8 & 18-21** are allowed and are now renumbered as **Claims 1-12**.

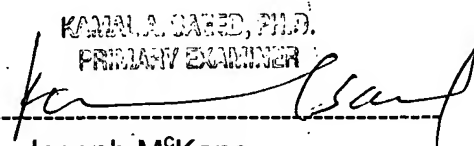
***Telephone Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Jason M. Nolan, Ph.D.** whose telephone number is **(571) 272-4356** and electronic mail is **Jason.Nolan@uspto.gov**. The examiner can normally be reached on Mon - Fri (9:00 - 5:30PM). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Joseph M<sup>c</sup>Kane** can be reached on **(571) 272-0699**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



12/5/07

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